

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)	
CONSUMERS ENERGY COMPANY for <i>ex parte</i>)	Case No. U-17875
approval of a solar distributed generation)	
pilot program.)	
_____)	

At the November 7, 2016 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER

History of Proceedings

On May 8, 2015, Consumers Energy Company (Consumers) filed an application requesting *ex parte* approval of a solar distributed generation pilot program (solar DG pilot). In an order issued on June 3, 2015 (June 3 order), the Commission observed that while Consumers' efforts in developing a solar DG program were laudable, the Commission nevertheless determined that the company should provide more information before the program could be approved. Specifically, the Commission found:

While the Commission recognizes that this is a pilot and does not want to be overly prescriptive in the review process, the application nevertheless raises significant questions that warrant broader policy consideration and clarification even for a limited pilot. Given the Commission's statutory charge in establishing and enforcing the Code of Conduct, the Commission must ensure that the program does not subsidize affiliates or provide an undue advantage to Consumers or its affiliates with respect to competitive service providers in this emerging market. Moreover, it

is essential that there is transparency in the overall structure and roles assigned to the regulated and unregulated business activities as well as the treatment and accounting of costs and revenues. Accordingly, the Commission requests that Consumers provide more specific and detailed information on the applicability of, and possible need for, the numerous waivers of the Code of Conduct that the company is requesting. In addition, the Commission requests more specific information about how the program will function overall. This should include, at the very least, more specific information about the criteria for the company's selection of vendors, how fees paid to Consumers by selected vendors, as well as other direct and indirect costs, will be accounted for, dispute resolution processes, and details about the proposed on-bill repayment system.

June 3 order, pp. 4-5 (footnote omitted). In addition, the Commission requested comments on the solar DG pilot from interested parties.

On June 19, 2015, Consumers filed the additional information the Commission requested. On or before July 10, 2015, comments were filed by Great Lakes Renewable Energy Association (GLREA); Paul Cusack, West Michigan Solar LLC; Chuck Bagwell, Zerwell Energy Corp; Allan O'Shea, Contractors Building Supply, Inc (CBS); Mary McGraw, Celtic Acres LLC; the Alliance for Solar Choice (TASC); Roz Linsea, Solar Winds Power Systems; Environmental Law and Policy Center and Vote Solar (jointly, ELPC); Michigan Energy Innovation Business Council (EIBC); and Bill Queen. On October 11, 2016, Consumers filed an amended application.

Consumers' Application and Response to the June 3 Order

In its original application, Consumers stated that it believed that there is interest in solar distributed generation among some of the company's residential and commercial and industrial customers. Accordingly, Consumers developed a pilot program "designed to promote solar distributed generation, gather information relating to customer interest in distributed solar generation, and provide interested customers an opportunity to obtain distributed solar generation for their homes or businesses." Application, ¶ 3. Consumers indicated that the pilot would

include approximately 100 customers and that the company “reserves the right to limit or expand participation in the Solar DG Pilot.”

In that initial application, the company made a number of representations about the structure and operation of the solar DG pilot including: (1) the company will contract with one or more solar vendors who will provide solar equipment for lease or sale, and who will in turn contract directly with interested customers. Pursuant to the contracts with the vendors, Consumers will be paid a fee for each executed solar agreement; (2) in addition to facilitating program participants’ connections with solar vendors, Consumers proposed to engage EnerBank USA (EnerBank), a company affiliate, along with other qualified, non-affiliated financiers, to provide competitive credit offerings for customers who seek to finance the purchase of solar generation equipment; and (3) Consumers raised the possibility of providing on-bill financing and requested that the Commission authorize it to utilize this payment option should it be feasible. Consumers also requested numerous waivers of sections II, III, and IV of the Code of Conduct approved in Case No. U-12134.

In its response to the Commission’s request for additional information, Consumers explained its selection criteria for solar vendors, including requirements that solar vendors have substantial capability and experience in all aspects of solar design, installation, financing, and service; that solar vendors have the ability to provide the equipment, financing, and service products as a package to customers; and that the solar vendors are able to “qualify and train Michigan-based solar installation companies in the solar system installation methods necessary to assure the installation can include the energy production guarantees and product warranties and services necessary to offer the enhanced value proposition to the customer.” Consumers’ response, p. 2. In addition, Consumers stated that it will consider finances and creditworthiness to ensure that the

selected solar vendors will deliver the promised products and services over the 20 to 25 year life of the solar projects.

Consumers reiterated that EnerBank is only one potential source for financing solar projects and that financing options will be made available through the solar vendors, not the company. Thus, Consumers stated that it would not share any customer information with EnerBank or any other financing entity and that contracts, if any, with EnerBank or other financing entities would be held by the solar vendors.

Consumers stated that it recognized that parties may have concerns that the solar vendors selected by the company will have their business efforts subsidized by the company through the solar DG pilot. Consumers disagreed, explaining that the company will not subsidize the solar vendors' activities, noting that entities that are not in the pilot remain free to market and sell solar DG systems. Moreover, solar installers may demonstrate their qualifications and experience and apply to be subcontractors for the solar vendors. Consumers added:

[T]o increase the visibility of Michigan-based solar installers to customers and to promote solar, the Company will request contact information and qualifications from Michigan-based renewable organizations, such as the Michigan Energy Innovation Business Council, Michigan Saves, or the Great Lakes Renewable Energy Association, for their qualified solar installers in Michigan, and the Company will make this solar installer information available on its new renewables website that is under development.

Consumers' response, p. 5.

With respect to the Commission's concerns about the structure and roles assigned to the company's regulated and unregulated business activities, Consumers responded that it did not intend to form a separate division or affiliate for the purposes of implementing the pilot. Consumers further claimed that the solar DG pilot will not impede the development of a competitive solar market, and that the company's promotional efforts may in fact facilitate the

development of the market for solar DG in Michigan. Consumers stated that the revenues and expenses from the pilot will be tracked separately from other company programs and the company will consult with the Commission Staff (Staff) on the appropriate account assignments. According to Consumers, “For ratemaking purposes, the program revenues and expenses will be moved above the line to ensure they are included in future rate cases and used to hold down rates.” Consumers’ response, p. 6. Consumers also provided a more detailed overview of the various waivers of the Code of Conduct the company is seeking for the solar DG pilot.

Finally, Consumers provided an extensive overview of its criteria for selection of the solar vendors, again emphasizing that the company will act as the facilitator of the program, bringing interested customers and solar vendors together. Consumers added that it will be paid a negotiated fee by the solar vendors, which may be based on system size or total system cost, and that any customer usage data provided to the solar vendors will only be released in compliance with Consumers’ Customer Data Privacy tariff. Consumers contended that once a customer has selected a solar vendor, all contracts and warranties will be between the customer and the solar vendor and any complaints will be referred to the solar vendor that carried out the project. Given the due diligence the company plans to undertake in selecting solar vendors, Consumers did not anticipate that significant service issues will arise over the course of the pilot.

Comments

Most commenters raised concerns about the potential unfair advantage that might be afforded to the solar vendors selected by the company. GLREA, CBS, TASC, EIBC, and Celtic Acres contended, *inter alia*, that the Commission should consider whether all interested vendors may participate in the program; whether the final selection criteria will be transparent; whether the selection of solar vendors will be open and competitive; and whether ratepayer resources will be

used to benefit the entire solar market or just a few solar vendors. These commenters also raised concerns about the number of Code of Conduct waivers the company requested and the potential for subsidization of utility affiliates. TASC and others raised concerns that the program will add costs as a result of the fee that Consumers proposes to charge solar vendors.

TASC commented that Consumers failed to demonstrate that there is a need for the program. TASC pointed out that while there are many obstacles to the development of solar DG in Michigan, the only purported barrier that Consumers identified was a lack of available, long-term financing for solar installations. Contrary to Consumers' claim, TASC contends that "[s]olar financing capital is actually booming nationwide, with experts estimating that the solar financing market is forecasted to rise to \$5.7 billion in 2016." TASC's comments, p. 3. TASC noted that in addition to financing provided by Consumers' affiliate, EnerBank, long-term financing for solar is available nationally through Admirals Bank. TASC further commented that there is other available financing and pointed to the Michigan Saves program for residential customers and Property Assessed Clean Energy (PACE) programs for commercial and industrial customers. According to TASC, the only new financial product that the program might offer is on-bill payment, a proposal that Consumers subsequently withdrew.

According to TASC, of far greater benefit to solar DG in Michigan would be efforts by Consumers to help streamline permitting, interconnections and inspections, and develop performance based incentives or upfront payments to lower the overall cost of solar DG. EIBC similarly points to the interconnection process as a constraint on the deployment of solar DG. TASC contended that the places where solar DG is expanding rapidly are areas where net metering is combined with an upfront payment.

TASC commented that although Consumers provided some additional information on its proposal, it failed to fully address the Commission's questions and concerns. For example, although the Commission requested information on direct and indirect costs of the program, Consumers merely indicated that the costs were expected to be minimal, without providing a budget or an assessment of the benefits and costs of the program. Further, Consumers did not provide a schedule for implementation and evaluation of the pilot.

Finally, TASC raised specific concerns about the relationship between Consumers and EnerBank, noting:

Consumers is essentially requesting a wholesale waiver of the Code of Conduct in order to use sensitive customer data to cherry-pick ideal customers for its affiliate, then use its brand to market its affiliate's services while making Solar Vendors, solar customers, and ratepayers foot the bill. This situation is the essence of what the affiliate rules are designed to prevent.

TASC's comments, p. 12. Accordingly, TASC requested that the application and waiver requests be denied until Consumers provides more details on the program.

ELPC commented that the Commission should be cautious about Consumers' requests to waive significant portions of the Code of Conduct and ensure that any waivers promote competition and an expanded market that better serves Michigan customers. ELPC also recommended that the Commission assure that the program will actually expand the solar market by, for example, targeting low and moderate income customers, rather than simply providing services that are readily available in the competitive marketplace.

ELPC noted that public utility commissions are generally reluctant to permit regulated utilities to offer products and services that are provided by the competitive market "unless there are reasons that the competitive market cannot, or will not, reach those customers." ELPC's comments, p. 3. ELPC pointed out that Consumers admits that its program may result in subsidies

that the Code of Conduct is meant to prevent, but the company contends that these subsidies are minimal, without providing any quantification.

ELPC contended that the solar vendors selected by the company will have a strong incentive to use EnerBank to provide financing, even though Consumers maintains that other financing entities are acceptable. ELPC also points out that:

Consumers proposes to use its customer data to identify the most desirable customers for distributed solar, share that data exclusively with Solar Vendors, and then use its logo, reputation, and access to customers to offer Solar Vendors enhanced marketing and presumably lower customer acquisition costs. . . . If deployed effectively, these commercial assets and services could help address existing market barriers and expand solar access in the state. However, if these regulated services and assets are not properly valued and recovered in the negotiated fee paid by Solar Vendors, then the Vendors that Consumers selects will receive an implicit subsidy at the expense of ratepayers, who will be underpaid for the value of those services.

ELPC's comments, p. 6.

ELPC reiterated that one way to mitigate the potentially harmful effects of Consumers' proposal would be to focus the program on underserved parts of the market such as low and moderate income customers who have an interest in solar DG.

EIBC likewise raised concerns about the relationship between Consumers and the solar vendors contending that "the Company's position as a public utility with a monopoly service territory covering approximately 1.8 million Michigan ratepayers would distort the competitive landscape, inadvertently limiting options for customers in the distributed generation market."

EIBC's comments, p. 2. EIBC notes that providing customer data only to solar vendors selected by Consumers "threatens to transfer the Company's unique monopoly position in the regulated market to one or more CECO-selected Solar Vendor(s) in the competitive distributed generation market." *Id.* EIBC therefore recommends that the Commission direct Consumers to ensure that

customer data is made available to any installer willing to contract for the information and comply with customer data privacy protections.

In contrast to other commenters, EIBC agreed with Consumers that the lack of long-term financing options is an impediment to solar DG development in Michigan. According to EIBC, the addition of EnerBank as a financier “should rightly be seen as a net positive.”

Amended Application

In its amended application, Consumers made the following revisions to its proposed solar DG pilot: (1) Consumers will provide a disclaimer in its marketing and communications related to the pilot and use of the Consumers Energy logo to expressly convey that the solar DG pilot is not regulated by the Commission; (2) Consumers will not release customer information to a third-party solar vendor without the interested customer first providing informed customer consent as defined in Consumers’ Customer Data Privacy Tariff; (3) no aggregated customer data will be provided to the solar vendor for purposes of the solar DG pilot. According to Consumers, the company will make the information on potential solar DG pilot systems available to the customer, and the customer will need to express its interest in participating in the solar DG pilot and provide informed customer consent for Consumers to provide customer information to the solar vendor; (4) for purposes of the solar DG pilot program, Consumers will not use any part of the utility’s billing structure. Consumers states that all billing activities for the solar DG equipment and services will be performed by the solar vendor for the customer.

Consumers reiterates that it will not own the solar equipment that customers install, and that the company’s role will be to advise customers interested in solar DG about the program. Consumers further states that the solar vendor’s activities will not be subsidized by the company

or its customers. The solar vendor will carry out the activities for the solar DG pilot, including contracting with various solar installers for their services. Consumers further states that it expects the solar DG pilot to be completed by December 31, 2018.

Because of the proposed amendments to the solar DG pilot, Consumers requests a more limited number of waivers to the Code of Conduct. Consumers requests waivers of Sections II.A, B, D, E; III.A and E of the Code of Conduct for purposes of implementing the solar DG pilot, to the extent the Commission finds these waivers necessary.

Discussion

The Commission finds that Consumers' solar DG pilot program should be approved as modified and discussed in more detail below. With respect to the requested waivers of the Code of Conduct, the Commission finds as follows:

- A waiver of Section II.A., which concerns the separation of regulated and unregulated functions, should be granted. Consumers states that for the purposes of the pilot, the company does not intend to establish a separate affiliate or division. The Commission agrees that this is reasonable for the solar DG pilot only, but the waiver may be revisited if the program continues beyond the pilot phase.
- Waivers of Sections II.B., II.D., and II.E., which concern the potential subsidization of unregulated business activities and the sharing of employees and facilities, should be granted for the purposes of the pilot only. Consumers avers that the implementation of the solar DG pilot will include some *de minimus* use of utility employees and facilities that may in turn lead to a small subsidy of the unregulated program through marketing and the receipt of fees. Because the program is limited as to duration, the Commission agrees that these waivers are reasonable. However, to ensure that the costs of the pilot are indeed minimal, the Commission directs the company to provide a separate accounting of the utility employee's time and any utility expense associated with the solar DG pilot program.
- A waiver of Section III.A., which concerns a prohibition on discrimination or preferential treatment for solar vendors, should be granted for the purposes of the pilot.
- A waiver of Section III.E., which concerns the sharing of customer information with unregulated services or activities, should be granted for purposes of the pilot. Because Consumers will not be establishing an affiliate or separate division for the pilot, some

customer information sharing will occur. The Commission agrees that a waiver is reasonable for the pilot program.

The Commission finds that Consumers' amended application addresses most, if not all, of the Commission's and commenters' concerns. The Commission notes that Consumers' initial application was not clear concerning the company's definition of a "solar vendor" and, as a result, several of the installers that commented assumed that "solar vendor" and "solar installer" were synonymous. In its response, Consumers clarified that the solar vendor(s) it selects are required to provide a package of services, including installation, warranties, long-term financing, and maintenance services over the 20 to 25 year life of the solar DG system. The solar vendor, in turn will contract with qualified solar installers for installation services. However, to further allay the concerns of many of the commenters, the Commission directs Consumers to include additional language with its disclaimer in its marketing and communications regarding this program stating, "Customers are free to pursue solar distributed generation equipment, installation, financing, and maintenance services through alternatives other than the Solar DG pilot."

The Commission also directs Consumers to be mindful that solar market participants, including solar vendors and installers who are not part of Consumers' solar DG program, shall be treated equally to the solar vendors that the company engages. For example, once customer consent is obtained, customer information shall be provided to any solar vendor or installer who requests the information on the same terms, conditions and timeframe that the information is provided to the solar DG pilot solar vendor. In addition, the company's solar vendor should receive no advantage over any others in application processing or interconnection.

Although Consumers proposes to provide a final report once the pilot is completed, the Commission finds that more regular updates, every four months, should be provided to the Commission Staff. These interim reports should include information on the overall program

including number of customers participating by customer class, number of kilowatts (kW) installed, and program revenues and expenses by customer class. For each system installed, Consumers shall provide the size of system (kW, direct current (dc)), location of system (ZIP code), date the contract was signed, date the system was operational, cost per kW dc installed, financing provider, interest rate, and terms offered. In its final report, Consumers shall also include information on how solar DG is expected to impact the distribution system as well as how customers learned about the program and specific information about the panels installed at each system (size and manufacturer). In the interest of evaluating the effectiveness of the pilot, the Commission encourages other market participants to submit similar information for purposes of comparison.

Finally, although Consumers requests authority to allow unlimited participation in the solar DG pilot, the Commission finds that the pilot should be limited to 100 customers. If the company finds that it is approaching this number during the course of the pilot, it may file a request with the Commission to expand the pilot or establish the solar DG pilot as a permanent program.

THEREFORE, IT IS ORDERED that Consumers Energy Company's proposed solar distributed generation pilot is approved as modified by this order.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any person desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel.

Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungp1@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy, Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner

By its action of November 7, 2016.

Kavita Kale, Executive Secretary